

## ARTICLE 16

### LOCAL IMPROVEMENT BENEFIT DISTRICTS

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## ARTICLE 16

### LOCAL IMPROVEMENT BENEFIT DISTRICTS

SEC. 8-16.00 FINDINGS AND PURPOSE. The City Council hereby finds and determines that development on land or a need for services such as sewer, water, or storm drainage sometimes necessitates the extension or oversizing of streets, sewer, water, and other public improvements, which not only benefit the property initially being served, but also provide benefit to other properties. When the cost of such public improvements is borne by the property initially being served, a means for other properties utilizing the public improvements and benefiting by them should be provided so that the other properties pay their equitable share of the cost of said improvements when circumstances or activity on those properties increases the density of traffic generation, storm water run-off, or results in a need for utility services. It is, therefore, the purpose of this article to provide the means for installers who advance the full cost of public improvements to serve not only their property but also to be available to serve and benefit neighboring lands with assurance that reimbursement on an equitable basis will occur when the neighboring lands make use of the improvements.

SEC. 8-16.01 DEFINITIONS. The definitions contained in this article govern the construction and interpretation of the provisions of this article unless the context otherwise requires. The definition of a word or phrase applies to any variants thereof.

- a. 'Benefit district' or 'district' means a local improvement benefit district formed pursuant to this article.
- b. 'City council' or 'council' means the City Council of the City of Hayward.
- c. 'City clerk' or 'clerk' means the City Clerk of the City of Hayward.
- d. 'Construction' as used in this article includes design, acquisition of right-of-way, administration of construction contracts, and actual construction of the improvements.
- e. 'Engineer' means the Public Works Director, the City Engineer, the engineer of the benefit district, or any other person designated by the City Council as the engineer for purposes of this article, including any officer, board, or employee of the City, or any private person or firm specially employed by the City as engineer for the purposes of this article.
- f. 'Finance Director' means the Finance Director of the City of Hayward or such other person as the City Manager or City Council may designate to discharge the duties described herein.
- g. 'Improvement' means such street work, utilities, and storm drainage to be installed, or agreed to be installed, which will be public improvements and available for use by neighboring properties.

'Improvement' also refers to such other specific improvements or types of

improvements, the installation of which, either by the installer, by public agencies, by private utilities, or by any other entity approved by the City or by a combination thereof, is necessary or convenient to insure conformity to or implementation of the general plan or any specific plan adopted by the City.

h. 'Incidental expenses' include:

- (1) The costs of preparation of the engineer's report, including plans, specifications, estimates, diagram, and benefit schedule;
- (2) The costs of printing, advertising, and the giving of published, posted, and mailed notices;
- (3) Compensation payable to the City for collection of funds and administration of the benefit district;
- (4) Compensation of any engineer or attorney employed to render services in proceedings pursuant to this article;
- (5) The fees charged by the City or other public agency (including utility company) for reviewing improvement plans and in administering the construction of the improvements, including but not limited to inspection of the work in progress;
- (6) Any other expenses incidental to the construction or installation of the improvements that have been approved by the City.

i. 'Installer' means the owner, subdivider, public entity, public utility, or other person responsible for constructing and installing the improvements for which reimbursement will be sought under authority of a benefit district and includes any lawful successor or assign.

j. 'Notice' means any resolution, order, notice, or other instrument authorized or required by this article to be published, posted, or mailed.

k. 'Project' means all of the improvements constructed or committed for construction by the installer and for which a benefit district is sought to be formed.

l. 'Property owner' means any person shown as the owner of land on the last equalized county assessment roll. When such person is no longer the owner, then the term 'property owner' shall mean any person entitled to be shown as owner on the next county assessment roll if such person is known to the City Clerk. Where land is subject to a recorded written agreement of sale, any person shown therein as a purchaser is also a 'property owner' for purposes of this article.

m. 'Value adjustment' or 'adjustment in the value of the improvements' means the sum of money to be added to the initial cost of installing the improvements which equals an amount derived from multiplying the initial cost by a predetermined percentage rate of simple interest over the period from when the improvements are accepted as complete by the City to the point in time each subsequent property owner becomes obligated to pay the amount due under the benefit schedule for development of the

land owned by that owner. Unless shown to be manifestly unfair and inequitable, the interest rate used shall be as earned by the City on its deposits as determined by the Finance Director as the average annual rate for any fiscal year.

#### SEC. 8-16.02 NOTICES.

- a. The City Clerk shall give notice or cause the same to be given in accordance with this article.
- b. Published notice shall be made pursuant to section 6061 of the Government Code. Publication of notice of hearing shall be completed at least 10 days prior to the date of hearing specified therein.
- c. Posted notices, other than of hearings for the formation of the benefit district or for the annexation of territory to an existing district, shall be made by posting upon any official bulletin board used by the City for the posting of notices or agendas.
- d. Posted notices of hearing for the formation of a benefit district or for the annexation of territory to an existing district shall be headed "Notice of Improvement" in letters at least one inch in height. The notices, not less than three in all, shall be posted in intervals of not more than three hundred feet along all streets within the proposed benefit district or within the territory proposed to be annexed to an existing district, as the case may be. Posting of notice of those hearings shall be completed at least 10 days prior to the date of hearing specified therein.
- e. Mailed notice shall be sent by first-class mail and deposited, postage thereon fully prepaid, in the United States mail and shall be deemed given when so deposited. Mailed notice to property owners when required by this article shall be given by mailing to those persons whose names and addresses appear on the last equalized county assessment roll or the State Board of Equalization assessment roll, as the case may be. Mailed notice to occupants when required by this article shall be given by mailing the notice addressed to the individual, or if unknown to 'occupant,' at the street or route address for the premises. It shall be the responsibility of the installer to supply the City Clerk with a current list of addresses or improved lots or parcels of land located within the proposed benefit district for this purpose.
- f. In lieu of mailing, notice may be delivered in person to any individual, firm, or corporation entitled to such notice and such personal delivery shall have the same force and effect as if the notice had been duly mailed.

#### SEC. 8-16.05 ENGINEER'S REPORT.

- a. The engineer's report shall refer to the benefit district by its distinctive designation, and shall contain plans of the improvements: the actual or an estimate of the costs (including incidental expenses) of the improvements; a diagram for the benefit district; and a benefit schedule apportioning the estimated costs of the improvements among the benefited lots or parcels.
- b. The plans included in the engineer's report shall show and describe existing and proposed improvements. The plans need not be detailed, but shall be sufficient if they show or describe the general nature, location, and extent of the improvements.

Plans for the project shall be filed in the office of the City Clerk and they shall be open for inspection and copying by any interested person or the public at large. When prepared, the engineer shall make a set of the detailed plans available for inspection by any interested person without charge at his or her principal office during regular business hours. If the benefit district is divided into zones, the plans shall indicate the class and type of improvements provided in each such zone. The plans may be prepared as separate instruments or either or both may be incorporated in the diagram as a combined instrument.

- c. The diagram for the benefit district shall show the exterior boundaries of the benefit district; the boundaries of any zones within the district; and the lines and dimensions of each lot or parcel of land within the district. Each lot or parcel shall be identified by a distinctive number or letter. The lines and dimensions of each lot or parcel of land shown on the diagram shall conform to those shown on the county assessor's maps then currently in use. The diagram may refer to the county assessor's map for a detailed description of the lines and dimensions of any lots or parcels, in which case, those maps shall govern for all details concerning the lines and dimensions of such lots or parcels.
- d. The costs of the improvements shall contain the total improvement costs, being the total cost of constructing or installing all proposed improvements, including acquisition of necessary right-of-way and all incidental expenses. If the installer wants to have an adjustment in the value of the improvements as defined in section 8-16.01m. added to the cost of the improvements, the installer shall so request and the engineer's report shall distinctly so state, and specify the interest rate to be used pursuant to section 8-16.01m.
- e. The benefit schedule shall state the amounts to be charged upon each lot or parcel of land within the benefit district; describe each benefited lot or parcel of land within the district; fix the chargeable amount upon all benefited lots or parcels of land within the district by apportioning that amount among the several lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements. If the installer is seeking a value adjustment as defined in section 8-16.01m. in the cost of the improvements, the benefit schedule shall clearly so indicate. The benefit schedule may refer to the county assessment roll for a description of the lots or parcels in which case that roll shall govern for all details concerning the description of the lots or parcels.
- f. The amount to be charged upon lands within a benefit district may be apportioned by any formula or method which fairly and equitably distributes the amount among all benefited lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements.
- g. The diagram and benefit schedule may classify various areas within the benefit district into different zones where, by reason of variations in the nature, location, and extent of the improvements, the various areas will receive differing degrees of benefit from the improvements. A zone shall consist of all territory which will receive substantially the same degree of benefit from the improvements.
- h. The engineer shall submit a certificate signed by the installer that any contract awarded for the construction of improvements shall be let to the lowest responsible

bidder after receipt of competitive bids which have been reviewed and found acceptable by the engineer and further that all work and services required for the project will be obtained at the lowest and best price available with due regard for quality and customer satisfaction.

SEC. 8-16.10 RESOLUTION INITIATING PROCEEDINGS.

- a. The proceedings for the formation of a benefit district shall be initiated only under the following circumstances:
  - (1) The installation of the improvements shall have been completed and accepted by the City or the installation shall be committed by an agreement with faithful performance and labor and materials security that has been approved by the City Attorney; and
  - (2) If the improvements have been completed, the actual costs have been submitted to the City with documentation that the parties performing the installation have been paid and released all mechanics lien entitlement; and
  - (3) In all cases, an engineer's estimate, prepared by the installer's engineer, has been submitted for review and approval by the City Engineer. The descriptions provided in the estimate need not be detailed but shall be sufficient if they enable the City Engineer to generally identify the nature, location, and extent of the improvements and the location and extent of the benefit district.
- b. If the installer receives notice requesting the above information and fails to comply with said request within 180 days of the request, unless an extension is granted by the Director of Public Works for good cause, then the installer shall forfeit the right to pursue formation of a benefit district and the City shall be under no obligation to form such district.
- c. Proceedings for formation of a benefit district shall be initiated by resolution adopted by the City Council. The resolution shall:
  - (1) Propose the formation of a benefit district pursuant to this article;
  - (2) Describe the improvements that have been made or are to be constructed or installed;
  - (3) Describe the purposed benefit district and specify a distinctive designation for the district; and
  - (4) Designate as engineer of work and order the engineer to prepare and file a report in accordance with directives set forth in section 8-16.05.

SEC. 8-16.15 ENGINEER'S REPORT--FILING AND APPROVING OR

MODIFYING. Upon completion, the engineer shall file the engineer's report with the City Clerk for submission to the City Council. The City Council may approve the report as filed or modify the report in any particular and approve it as modified.

SEC. 8-16.20 RESOLUTION OF INTENTION. Upon approval of the report, either as filed or as modified, the City Council shall adopt a resolution of intention. The resolution shall:

- a. Declare the intention of the City Council to order the formation of a benefit district and to fix and collect charges pursuant to this article;
- b. Generally describe the improvements;
- c. Refer to the proposed benefit district by its distinctive designation and indicate the general location of the district;
- d. Refer to the engineer's report on file with the City Clerk for a full and detailed description of the improvements, the boundaries of the benefit district and any zones therein, and the proposed charges upon benefited lots and parcels of land within the district; and
- e. Give notice of, and fix a time and place for, a hearing by the City Council on the question of formation of the benefit district and adoption of the proposed benefit schedule.

SEC. 8-16.25 NOTICE OF HEARING. The City Clerk shall give notice of hearing by causing the resolution of intention to be published, posted, and mailed to the property owners and occupants within the proposed benefit district as provided for in section 8-16.02. The City Clerk shall also mail notice of the hearing to those public agencies and utilities (other than the City itself) that will be asked to accept responsibility for any of the improvements to be installed as a result of formation of the benefit district. The engineer shall supply the City Clerk with a list of the names and mailing addresses for the public agencies and utilities entitled to receive such notice.

SEC. 8-16.30 WRITTEN PROTEST. Prior to the conclusion of the hearing, any interested person may file a written protest with the City Clerk, or, having previously filed a protest, may file a written withdrawal of that protest. A written protest shall state all grounds of objection. A protest by a property owner shall contain a description sufficient to identify the property he or she owns.

SEC. 8-16.35 HEARING. The City Council shall hold the hearing at the time and place set forth in the resolution of intention or in any subsequent order of the City Council continuing the hearing or changing the place it will be held. All interested persons shall be afforded the opportunity to hear and be heard. The City Council shall consider all oral statements and all written protests or communications made or filed by any interested persons.

SEC. 8-16.40 ORDER DURING OR FOLLOWING HEARING.

- a. During the course or upon the conclusion of the hearing, the City Council may order changes in any of the matters provided in the engineer's report, including changes in the improvements, the boundaries of the proposed benefit district and any zones therein, and the proposed diagram or the proposed benefit schedule.
- b. If the installer has made a request for adjustment in the value of the improvements as defined in section 8-16.01m., the City Council shall fix the percentage rate of interest. The percentage rate of interest shall be incorporated into and made a part of the benefit schedule adopted upon formation of the district. If denied, or if not requested

by the installer, the benefit schedule shall reflect the fact that no adjustment in the value of the improvements will be allowed.

- c. The City Council may, without further notice, order the exclusion of territory from the proposed benefit district but shall not order the inclusion of additional territory within the district except upon written request by a property owner for the inclusion of his or her property or upon the giving of mailed notice of a continued hearing to the property owners that the City Council will consider including their property in the proposed benefit district at that continued hearing.

SEC. 8-16.45 RESOLUTION ORDERING FORMATION OF DISTRICT--  
MAJORITY PROTEST--ABANDONMENT OF PROCEEDINGS.

- a. Upon conclusion of the hearing, the City Council shall determine whether a majority protest exists. For that purpose, the extent of territory within the proposed benefit district shall be adjusted in conformance with any orders made by the City Council excluding territory from or including additional territory within the benefit district.
- b. Proceedings for the formation of the benefit district shall be abandoned if a majority protest exists unless, by a vote of five members of the City Council, the protest is overruled. A majority protest exists if, upon conclusion of the hearing, written protests have been filed and not withdrawn that represent property owners owning more than 50% of the area of chargeable lands within the proposed benefit district.
- c.. If a majority protest has not been filed, or, if filed, has been overruled, the City Council may adopt a resolution ordering formation of the benefit district and adopting and confirming the diagram and benefit schedule, either as originally proposed before the City Council or as changed by it. If a majority protest has been filed and not overruled by the City Council, or the City Council otherwise finds formation of the district not in the best public interest, it shall adopt a resolution abandoning the proceedings.

SEC. 8-16.50 RECORDING COPY OF RESOLUTION FORMING BENEFIT DISTRICT, DIAGRAM, AND BENEFIT SCHEDULE. Immediately after adoption of any resolution forming a benefit district, and confirming and adopting a diagram and benefit schedule, the City Clerk shall record certified copies thereof with the county recorder.

SEC. 8-16.55 COLLECTION OF AMOUNTS DUE INSTALLER. From and after the recording of the documents specified in section 8-16.50, no building permit other than for repairs or additions to or alterations of a building or other structure existing on the date of formation of the benefit district or water or sewer service application made to the City shall be approved, except upon payment to the Finance Director of the amount or amounts due under the benefit schedule. All amounts collected shall be deposited in a special City fund to be disbursed as provided for in section 8-16.60.

SEC. 8-16.60 REIMBURSEMENT OF INSTALLER.

- a. Periodically, but not more often than each fiscal year, the Finance Director shall, upon proof that the improvements have been installed to the satisfaction of the City or public agency having jurisdiction, pay to the installer all money collected under the benefit schedule for the district, less the amount authorized to be retained by the City



under terms of the resolution ordering formation of the district to defray the cost of collection and administration incurred as a result of formation of the benefit district. Interest, if any, earned as a result of deposit of the special fund shall likewise be paid to the installer.

- b. The right to reimbursement shall be a personal right of the installer and shall not run with the land located within the benefit district owned by the installer. No assignment of the installer's interest shall be effective for reimbursement purposes until notice in writing thereof shall have been delivered to the Finance Director. Upon receipt of such notice authenticated to the satisfaction of the Finance Director, reimbursement shall then be made to the assignee, and the City shall be discharged and relieved of any further obligation to make reimbursement payments to the installer.

SEC. 8-16.65 ADJUSTMENTS IN BENEFIT SCHEDULE. Any affected property owner, or the City Council on its own motion, may initiate proceedings before the City Council for prorated adjustment of the benefit schedule after the improvements have been constructed or installed and the actual costs thereof have been ascertained. The proceedings shall be initiated by the filing of a request with the City Clerk or the adoption of an appropriate resolution by the City Council. Prior to making any adjustments in the benefit schedule, the City Council shall hold a public hearing, notice of which shall be mailed to the installer and all affected property owners at least 10 days prior to the date scheduled for the hearing in the manner prescribed in section 8-16.02. Upon conclusion of the hearing, the City Council may order changes in the benefit schedule it deems equitable and appropriate. The City Clerk shall immediately record a certified copy of the resolution making such adjustments in the benefit schedule with the county recorder.

SEC. 8-16.70 ANNEXATIONS TO EXISTING BENEFIT DISTRICTS. The City Council may order the annexation of territory to an existing benefit district formed under this article. Proceedings for such annexation shall be initiated, conducted, and completed in substantial accordance with the procedures provided in this article for the formation of a benefit district. If territory is annexed to an existing benefit district, the City Clerk shall immediately record a certified copy of the resolution ordering such annexation and confirming and approving the revised diagram and benefit schedule with the county recorder.

SEC. 8-16.75 GOVERNMENT AND PUBLIC UTILITY PROPERTY. Public property owned or controlled by any public agency and in use for the performance of a public function shall be subject to inclusion in a benefit district. Whenever a railroad, gas, water, or electric utility right-of-way or electric line right-of-way is included within a benefit district, such right-of-way shall be included in the initiating resolution, the engineer's report, and the resolution of intention, and shall be subject to benefit charges only if, and to the extent that, it is found to benefit from installation of the proposed improvement. In determining whether or not such right-of-way benefits, its use as a right-of-way shall be presumed to be permanent.

SEC. 8-16.80 TIME LIMITATION.

- a. Except as provided in subsection b. hereof, each benefit district formed under provisions of this article shall terminate and cease to exist on the fifteenth anniversary of the date the City Council adopted the initial resolution forming the benefit district, unless it is sooner terminated because all money due the installer as a result of formation of the benefit district has been paid.

- b. A benefit district formed under the provisions of this article to comply with the Government Code sections 66485 through 66489 shall terminate at the time set forth in the agreement.
- c. Upon termination, all money remaining in the special fund created under section 8-16.55 shall be paid to the installer and the City shall have no further obligation to collect any benefit charges.